

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DALE MITCHELL,
Petitioner,
v.
RON VAN BOENING,
Respondent

CASE NO. C09-5460RJB/JRC

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court having reviewed the Report and Recommendation of the United States Magistrate Judge J. Richard Creatura, objections to the Report and Recommendation, if any, and the remaining record, does hereby find and Order:

- (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 13);
- (2) The petition is **DISMISSED WITHOUT PREJUDICE** as unexhausted.
- (3) In accordance with Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, a certificate of appealability is **DENIED** with respect to all claims asserted by petitioner in his habeas petition.
- (4) The clerk is directed to send copies of this Order to Petitioner, and the Hon. J. Richard Creature.

DATED this 22nd day of February, 2010.

Robert J. Bryan

ROBERT J. BRYAN
United States District Judge